

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6571

BILL NUMBER: HB 1256

NOTE PREPARED: Mar 14, 2013

BILL AMENDED: Jan 31, 2013

SUBJECT: Cellular Telephones in Penal Facilities.

FIRST AUTHOR: Rep. Dermody

FIRST SPONSOR: Sen. Steele

BILL STATUS: As Passed Senate

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Minimum Fines* – It requires a court to impose a fine of at least \$500 but not more than \$5,000 on a person who is: (1) an employee of the Department of Correction or a penal facility; and (2) convicted of committing trafficking with an inmate as a Class A misdemeanor; if the article involved was a cigarette or tobacco product. It requires a court to impose a fine of at least \$500 but not more than \$10,000 on a person who is convicted of committing trafficking with an inmate involving a cellular telephone or other wireless or cellular communications device as a Class C felony.
- B. *Enhancement for Possessing a Deadly Weapon* – It makes it a Class D felony for a person who is not: (1) an inmate of a penal facility; or (2) a child of a juvenile facility; to knowingly or intentionally possess in, or carry or cause to be brought into, the penal facility or juvenile facility a deadly weapon without the prior authorization of the person in charge of the penal facility or juvenile facility. This is currently a Class A misdemeanor.
- C. *New Misdemeanor* – It makes it a Class A misdemeanor for a person to knowingly or intentionally possess a cellular telephone or other wireless or cellular communications device while incarcerated in any penal facility.

Effective Date: Upon Passage.

Explanation of State Expenditures: *Enhancement for Possessing a Deadly Weapon* – The bill makes it a Class D felony to knowingly or intentionally possess a deadly weapon while in a prison or juvenile facility without necessarily intending to distribute the deadly weapon to a confined person. The current penalty is a

Class A misdemeanor.

State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail. However, any expenditure increase is likely to be small. A Class D felony is punishable by a prison term ranging between six months to three years or reduction to Class A misdemeanor. The period of incarceration will depend upon mitigating and aggravating circumstances. If offenders can be housed in existing facilities with no additional staff, the marginal cost per offender for medical care, food, and clothing is approximately \$3,234 annually, or \$8.86 daily. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

New Misdemeanor – This provision would affect persons who are incarcerated in DOC facilities who have cell phones. Under current law, persons who are incarcerated in county jails commit a Class A misdemeanor if they possess a cell phone or other wireless form of communication. As proposed, offenders incarcerated in DOC facilities would also commit a Class A misdemeanor if they possess a cell phone or other form of wireless communication. Under current regulations, confined offenders lose privileges and receive demerits when they are caught with cell phones. DOC estimates that on average those who have an Class A misdemeanor at any level of their sentence, have been sentenced to an additional 362 days for that misdemeanor.

Explanation of State Revenues: *Minimum Fine* – Under current law, there is no minimum fine for a Class C felony if the person distributed a cell phone or other wireless or cellular communications device. Adding a minimum fine of \$500 up to \$10,000 could increase the revenue that would be deposited in the Common School Fund.

Employees of correctional facilities are currently fined \$5,000 for each offense involving trafficking of tobacco products. The bill would impose a minimum fine of \$500 up to \$5,000 for these offenses.

Any change in revenue is not known.

The staff at the Supreme Court's Judicial Technology and Automation Project examined the number of cases filed for inmate trafficking and indicated that there were no reported cases in the 144 courts in 44 counties that were part of the Odyssey Case Management System in CY 2011.

Enhancement for Possessing a Deadly Weapon – More revenue to the Common School Fund could be collected if a larger criminal fine is assessed by the sentencing court. However, any increase in revenue is likely to be small. The maximum fine for a Class A misdemeanor is \$5,000, while the maximum fine for a Class D felony is \$10,000. Court fees for both misdemeanors and felonies are the same.

Explanation of Local Expenditures: *Enhancement for Possessing a Deadly Weapon* – If an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced. However, any cost reduction is likely to be small. The maximum term of imprisonment for a Class A misdemeanor is up to one year.

Explanation of Local Revenues: *Enhancement for Possessing a Deadly Weapon* – Court fees for both misdemeanors and felonies are the same.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Department of Correction.

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